

Armour Oil Company and Chauffeurs, Teamsters and Helpers Union, Local 150, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 20-CA-16064

August 19, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND
MEMBERS JENKINS AND HUNTER

On March 12, 1982, Administrative Law Judge Earledean V. S. Robbins issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and Respondent filed a brief in answer thereto.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,¹ and conclusions of the Administrative Law Judge and to adopt her recommended Order, as modified herein.²

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Armour Oil Company, Martinez and West Sacramento, California, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 1(d):

"(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in the Act."

2. Substitute the attached notice for that of the Administrative Law Judge.

¹ The General Counsel has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing her findings.

In view of the Administrative Law Judge's credibility resolutions, we find it unnecessary to reach the issue of whether an adverse inference should have been drawn from the failure of John Thompson, Respondent's former manager-dispatcher at its Sacramento facility, to testify.

² In her recommended Order the Administrative Law Judge inadvertently omitted the words "like or" from par. 1(d). Accordingly, we have modified the Administrative Law Judge's recommended Order to correct this inadvertent error.

IT IS FURTHER ORDERED that the complaint allegations not specifically found herein be, and they hereby are, dismissed.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

WE WILL NOT tell our employees that they will not be allowed to obtain union representation.

WE WILL NOT threaten our employees that they will be discharged if they seek union representation.

WE WILL NOT threaten our employees that we will close one of our facilities if the employees at that facility select a union as their collective-bargaining representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in the National Labor Relations Act.

ARMOUR OIL COMPANY

DECISION

STATEMENT OF THE CASE

EARLDEAN V. S. ROBBINS, Administrative Law Judge: This matter was heard before me in Sacramento, California, on December 1 and 2, 1981. The charge was filed by Chauffeurs, Teamsters and Helpers Union, Local 150, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, on March 3, 1981, and served on Armour Oil Company, herein called Respondent, on March 5, 1981. The consolidated complaint which issued on April 30, 1981, alleges that Respondent violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amend-

ed, herein called the Act. The basic issue herein is whether Respondent closed its West Sacramento facility and transferred the employees at that facility to Respondent's Martinez facility because the employees at the West Sacramento facility had engaged in union activities.

Upon the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the parties, I make the following:

FINDINGS OF FACT

I. JURISDICTION

At all times material herein, Respondent, a California corporation, with offices and places of business in the States of California, Oregon, Washington, Arizona, and Nevada, including a facility in Martinez, California, herein called Martinez facility, and a facility in West Sacramento, California, herein called the Sacramento facility, has been engaged in the sale and distribution of gasoline and oil products to dealers. During the calendar year 1980, Respondent, in the course and conduct of said business operations, purchased and received at its facilities within the State of California products, goods, and materials valued in excess of \$50,000 directly from points outside the State of California.

The complaint alleges, Respondent admits, and I find that Respondent is now, and at all times material herein has been, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

The complaint alleges, Respondent admits, and I find that the Union is now, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Facts

For a number of years Respondent has operated as a wholesale distributor of gasoline products in several western States. The principal owner, president, and chief executive officer of Respondent is Byram Armour, herein called Armour. Prior to December 16, 1980, Respondent's vice president¹ was Henry Armour, the son of Byram Armour. Robert Rapoza, herein called Rapoza, is terminals manager. As such, he is in charge of the terminal managers, the dispatchers, truck repairs, and any problems that arise in the terminals. At least since December 16, 1980, he has been second in command to Armour. Armour personally purchases and sells all of Respondent's products, equipment, and real estate. Respondent maintains no storage facility for the gasoline products that it sells. Rather, it purchases such products from various suppliers either at refineries or pipeline terminals. It then distributes the product to its customers in tanker trucks driven by drivers, in Respondent's employ,

who work out of Respondent's various terminal locations. Prior to 1979 Respondent had terminals or truck yards located in San Diego, California; Bakersfield, California; Paramount, California; Sacramento, California; Martinez, California; Portland, Oregon; Seattle, Washington; Spokane, Washington; Las Vegas, Nevada; and Phoenix, Arizona. As of February 1980, at the time of the hearing in a prior proceeding, the drivers employed at these various terminals were represented by various local unions affiliated with the Teamsters International Union on a terminal-by-terminal basis and were covered by separate collective-bargaining agreements.²

For a number of years, Respondent's practice has been to locate its terminals or truck yards close to a source of supply and at a point from which it could more economically service its customers and potential customers. A typical workday for one of its drivers is to pick up a load of fuel from a supplier, deliver that load to customers, return with an empty truck to a supplier, pick up another load, deliver that load to customers, and so on to the end of the day. At the end of the workday, the driver either returns with an empty truck to Respondent's facility or with a loaded truck prepared for delivery to Respondent's customers at the beginning of the next shift. Prior to September 1979, Respondent's customers in northern California and northern Nevada were serviced by Respondent's drivers who operated out of Respondent's Martinez facility, a facility about 65 miles from Sacramento which has been in existence for at least 20 years. In 1979 Respondent decided to open a facility in Sacramento.³ In a prior proceeding the Board affirmed the Administrative Law Judge's finding that the decision to open the Sacramento facility was based on legitimate business reasons upon securing commitments from suppliers, in particular Aminoil, to furnish Respondent with an adequate supply of gasoline at a Sacramento pipeline terminal.⁴

Respondent commenced operation in Sacramento in September 1979, operating out of a motel room. Initially this Sacramento operation was staffed by drivers on temporary assignment from Respondent's Bakersfield and Martinez facilities. On or about October 15, 1979, Respondent began hiring local drivers and, at some point thereafter, the drivers on temporary assignment returned to the Bakersfield and Martinez facilities. Sometime in November 1979 Respondent transferred its Sacramento operations to a trailer office and drivers' room located behind a Gas-N-Save service station and truckstop,⁵ with three trucks and nine drivers. At that time, John Thompson became the dispatcher for, and manager of, the Sacramento facility. Thereafter Thompson hired all drivers at this facility. Jess Lander, who began working at the Sacramento facility as a driver in October 1979, relieved Thompson as dispatcher 2 days a week.

Armour testified that, when the Sacramento facility was opened, it was envisioned that ultimately the facility

² *Armour Oil Company, supra* at 1106.

³ Respondent had previously operated a facility in Sacramento for a period of time in 1972 but had closed it during the oil crunch of 1973.

⁴ *Armour Oil Company, supra* at 1106.

⁵ This service station and truckstop was owned by Armour.

¹ The information as to Henry Armour's title comes from a previous case concerning Respondent, *Armour Oil Company*, 253 NLRB 1104, 1106 (1981).

would service customers in an area commencing at around Vacaville, which is about midway between the Sacramento and Martinez facilities and extending north to Crescent City, east to Reno and Carson City, Nevada, and south to Stockton, California. However, in order to furnish the drivers at the Sacramento facility adequate work while Respondent was attempting to develop additional business in the area, the Sacramento drivers did make pickups and deliveries in a wide area. In or about August 1980, Armour commenced some remodeling at the Gas-N-Save station and truckstop. The area was paved and a truck wash and new lighting were installed. Some building remodeling had either commenced, or was anticipated, which would include a dispatch office in the back section of the station.

Chuck Brooks, business agent for the Union, testified that on or about October 10, 1979, he received a telephone call from a Mr. Barowski, an employer representative for Respondent. They arranged a meeting for October 12, 1979. The meeting was held as scheduled, during which Barowski informed the union representatives that Respondent was going to open a terminal in Sacramento and wanted to negotiate a labor agreement with the Union. Sometime during the latter part of October or the first part of November, Respondent's employees at the Sacramento facility met with the Union and signed cards authorizing the Union as their collective-bargaining representative. The Union and Respondent participated in several sessions between October and mid-December covering these employees. In the prior proceeding, the Administrative Law Judge found that these negotiations reached an impasse in December when the Union adopted a take-it-or-leave-it bargaining position, namely, it took the position that it would accept only a contract identical to Respondent's contract with Teamsters Local 315 covering the drivers at Respondent's Martinez facility.⁶ There is no evidence of any further negotiation sessions⁷ nor of any union activity by Respondent's employees at the Sacramento facility until early 1981.

By August 1980 drivers from the Sacramento facility were picking up fuel from Pacific Refining Company in Hercules, California.⁸ The three trucks were apparently inadequate to handle the workload so a fourth truck was transferred to Sacramento from Respondent's Bakersfield facility. By February 1981 Respondent had 5 trucks and 15 drivers working out of its Sacramento facility. Except for the period during which pickups were primarily made from Hercules, during 1979 and 1980, Respondent's principal supplier for the Sacramento facility operation was Aminoil in Sacramento. Other suppliers were Aminoil in Stockton, California; Tosco in Avon, California; and UCO in Martinez. Armour would notify Thompson or Lander, either directly or through someone else, on a

daily basis as to how much fuel at what locations was available for the day. The dispatchers would then instruct the drivers where to make the pickups for the day. The wages and benefits paid to the Sacramento drivers were substantially the same as those provided under a collective-bargaining agreement with the Teamsters local union which represented the employees at Respondent's Bakersfield facility.

B. The Alleged Statements by Thompson

Don Lynch testified that he was hired by Thompson about August 2, 1980,⁹ as a driver. According to him, at the time he was hired Thompson told him that Respondent's Sacramento facility was a nonunion yard but that the employees were paid the same as the union-represented drivers at Respondent's Bakersfield facility. Thompson further said that the reason the Sacramento yard was in existence at the time was because it was nonunion and, if at all possible, Armour would make the Sacramento facility the hub of his operations and would close down the Martinez facility. Lynch further testified that he thought Bill Wright was present during this conversation. However, although Wright testified, he gave no testimony with regard to this conversation.

Lynch also testified that in early February 1981 he came into the drivers' room as Thompson was talking to Bill Wright and another driver. He is not sure of the identity of the second driver but thinks it was Don Ennis. According to Lynch, as he entered the room, he heard Thompson say that if the yard became union it would definitely be closed. Thompson then turned around and said to Lynch, "This is the truth, Ken. If it becomes union, the old man will close it." Neither Wright nor Ennis testified as to this alleged conversation.

Carl Fox testified that when he was hired as a driver on or about December 5, 1980, Thompson told him that the Sacramento facility would be the hub of Respondent's northern California operation. Thompson said that the pay and benefits at the facility were comparable to union benefits but that Respondent's Sacramento facility was nonunion and it was going to stay that way.

Fox further testified that in February 1981, during a conversation with Thompson, he told Thompson that Respondent's Martinez drivers were hassling the West Sacramento drivers. Fox also said that some of the Sacramento drivers were unhappy and felt that they could solve their unhappiness if they obtained union representation. Thompson replied, "Well, it's nonunion and we are going to keep it that way." Thompson then asked if Fox was satisfied with the way things were going. Fox said yes. Thompson said that if the drivers started pushing for the Union he would fire them or something to that effect. Fox does not recall exactly what words Thompson used. Later, when he was asked if Thompson had told him prior to February 21 that the Sacramento facility would, or might, be closed, Fox testified, "I'm not sure. But the day we had coffee over at Sambo's, 10 days or so before, there was some discussion of that and it

⁶ *Armour Oil Company, supra* at 1106.

⁷ Brooks testified that early in 1980 he telephoned Henry Armour a couple of times regarding scheduling further meetings. Then he learned that Armour had left Respondent's employ. Thereafter he made no further attempts to schedule negotiation sessions.

⁸ The fuel which was picked up in Hercules in August was acquired through a special purchase arrangement at a time when the supply in Sacramento was limited and for a short period of time most of the pickups done by Sacramento drivers was from Hercules, a distance of 60 to 68 miles from the Sacramento terminal.

⁹ Unless otherwise indicated all dates herein in August through December will be in 1980, and those in January through April are in 1981.

seems to me, it was mentioned in the conversation . . . one of us said, if the way things stand right now, if the Union was voted in, that the trucks would be moved to Martinez."

Driver Burt Baltz was hired by Thompson on or about August 19, 1980. On direct examination, Baltz testified that within 2 weeks thereafter he asked Thompson what would happen if the drivers did go union. Thompson said that Armour would probably jerk the yard out of Sacramento if they did that and that there was no way Respondent would ever go union at the West Sacramento facility. On cross-examination, he testified, as to this conversation, that he asked Thompson when he was going to be a permanent driver.¹⁰ Thompson said that as long as business was there and Baltz worked a certain period of time he would become a permanent driver. Baltz then asked whether the Sacramento facility would ever become union after he became a permanent employee and what the chances were of this happening. Thompson said there was no chance of it happening.

Baltz further testified that, shortly before Thanksgiving 1980, he asked Thompson whether the employees at the Sacramento facility would be paid for Thanksgiving and commented that on a union job employees generally had to work on the day before a holiday and the day after a holiday in order to receive holiday pay. Thompson said that this was a nonunion job and he would be paid for the holiday whether he worked it or not. Then something was said which Baltz cannot recall about the Union. At this point, Thompson said there was no way the Sacramento facility would go union, that Armour would close the facility.

Baltz also testified that in early October 1980 Armour visited the Sacramento facility. Later that day, Baltz asked Thompson what was going on with Armour's visit. Thompson replied that Respondent had plans to pave the yard and put in a wash facility and eventually to build a maintenance and office facilities and to expand the facility to handle more trucks. On cross-examination as to the Thanksgiving holiday pay conversation, Baltz testified only that he asked Thompson whether he would be paid. Thompson said he would be. Baltz remarked that on most jobs he had worked one had to work the day preceding and the day following a holiday in order to receive holiday pay. He further testified that he could not recall what else was said. On redirect examination, he again testified that, when he mentioned the requirements on other jobs, including union jobs, for receiving holiday pay, Thompson said, "This is not a union job. You get paid for that. It will never be a union shop here."

Driver Vernon Hilbun testified that after Thompson hired him on November 6, 1980, he had about three conversations with Thompson regarding the Union. The first was approximately 2 weeks after he began work. According to Hilbun, the union situation was being discussed by the drivers present and Thompson remarked, "The minute this yard goes union, this yard will be closed." Thompson made similar remarks on two other

occasions, according to Hilbun. One such conversation was perhaps a month after the first conversation and the third conversation was within 2 weeks after the second. About three drivers were present during these conversations. Steve Shepherd was there once and also Dale Vagle. Hilbun also testified that in or about January 1981, at the Sacramento facility, Thompson told him, "It looks like the old man is going to make this the hub of his business." According to Thompson, Shepherd and Vagle were present during the first conversation and most of the talking had been done by Vagle. Hilbun does not recall the context of these remarks except that in one instance there was discussion as to the hassle that the Sacramento drivers were receiving from the Martinez drivers, and that in the first conversation Vagle had asked, "Why isn't this yard union when all the others are."

Steve Shepherd testified that he was hired by Thompson on November 3, 1980. Shepherd asked Thompson what the benefits were. Thompson said they were the same, if not better, than the benefits Shepherd had received at the union job which he held previously. Shepherd asked what the chances were of the Sacramento facility going union. Thompson replied that this was a nonunion shop and, if he heard anyone talking about going union, he would terminate them. They would be fired by him personally. Shepherd later testified that he asked Thompson what the chances were that the facility would go union. Thompson said, "This is a nonunion shop and I don't want to hear anybody taking about union or I will terminate them."¹¹

Shepherd also testified that shortly before Christmas 1980 he asked Thompson whether the drivers at the Sacramento facility would be paid for Christmas and their birthdays. Thompson said they would. Shepherd remarked that it was almost as good as a union job. Thompson agreed. Shepherd asked if there was any chance of the employees at the Sacramento facility being represented by a union. Thompson said, "No, there is not. This is a nonunion shop. It's going to stay that way."

William Wright testified that he was hired by Thompson in May 1980. At that time Thompson told him that Respondent's Sacramento facility was a nonunion yard, would remain a nonunion yard, and he would not tolerate any union discussion in the facility. Wright further testified that around October or November he had a conversation with Thompson in which Thompson told him that Armour was trying to bring the Sacramento facility up to the standard of the Martinez facility, that he wanted to get rid of the trailer and have an office there, and that Armour had purchased the land next door to the Gas-N-Save station and was going to make a terminal out of it. Thompson said they were busy and it looked like the Sacramento facility was going to get

¹⁰ Baltz had been told that his employment would be for about 2 weeks only.

¹¹ Respondent argues that this testimony is not credible since no mention was made on cross-examination of this remark by Thompson. However, at no time during cross-examination was Shepherd asked to recount the entire conversation. Rather, he was asked specific questions as to the entire conversation, none of which were framed to elicit testimony concerning any remark by Thompson concerning union activity or representation.

bigger. Wright also testified that he had a conversation with Thompson before Wright began working for Respondent and at a time when Thompson worked at the Sacramento facility as a driver and before he became manager of the facility.¹² According to Wright, Thompson told him that the drivers at the Sacramento facility were union, some from Bakersfield and some from Martinez, that they could not figure out which contract to use, so Armour closed the yard down and rehired non-union drivers.

On cross-examination, Wright testified as to the conversation he had with Thompson when he was hired. During this recounting of the conversation, his account did not include any remark by Thompson as to the Sacramento facility being or remaining nonunion nor about Thompson not tolerating any union discussion in the facility. Rather, he testified that he walked into the trailer office and asked Thompson if they were hiring. Thompson said yes. Wright filled out an application and Thompson gave him a packet of instructions. Wright then took the Department of Transportation test and a safety test. Thompson said that Wright would have to take a student run with Jess Lander after the end of the night shift. Wright asked if the Sacramento facility was still nonunion. Thompson said it was. Wright asked if they were having any more trouble. Thompson said no, that Armour said they would be keeping the product down in the Sacramento area and would not have to mingle with the Martinez drivers or be in contact with them. Wright was then asked if that was the complete conversation, as he recalled it, that occurred between him and Thompson on the day he was hired, to which Wright replied yes.

Wright also testified that in or about January 1981 he and driver Dale Vagle had a conversation with Thompson. On direct examination Wright testified that he told Thompson that they were really getting pressure to go union.¹³ Thompson replied that he would not tolerate any such pressure, that he would not stand for any driver discussing going union and would terminate anyone who tried to make the Sacramento facility a union yard. On cross-examination, however, Wright testified that he told Thompson that the Sacramento drivers were being harassed by the Martinez drivers and were getting tired of being subject to such working conditions. Vagle said he could not understand why employees of the same company had to fight among themselves, that it did not make sense. Thompson said it would be taken care of, that it would not last much longer. Wright said he was not going to put up with much more of it because his life was worth more than \$8.50 an hour.

¹² There is no evidence that Thompson continued to drive a truck after he became the manager-dispatcher for the Sacramento facility, except that Lander testified that Thompson drove a truck on February 21. Thompson worked full time as dispatcher. Wright testified that he recalls this conversation as being in December 1979 but admits that his memory as to Thompson being a driver is more accurate than his memory of the date.

¹³ This was in apparent reference to what he considered as harassment of the Sacramento drivers by the Martinez drivers. However, on direct examination Wright did not relate any specific remarks made during this conversation regarding such harassment.

Donald Ennis testified that he began work at Respondent's Sacramento facility on August 24, 1980, and that at the time of his hire he had a discussion with Thompson concerning unions. According to him, he told Thompson that he understood that Respondent was union. Thompson said all of Respondent's facilities were union except for the Sacramento facility, that the Sacramento facility was Armour's pet and would not be union.

Ennis further testified that on or about February 7, 1981, Thompson told him that he was making a trip to San Diego, that he was having a lot of problems with the drivers and other things, that he had been offered another position and he was going to San Diego to speak to Armour in an effort to resolve some problems. Ennis suggested that it would be easier if the Sacramento facility went union and had a union dispatch system like the Martinez facility. Thompson replied, "No, it wouldn't do us any good at all because we wouldn't have a job to have a dispatcher at, because he would pull the yard in a minute if we went union."

Ennis testified that about a week later he asked Thompson how his trip to San Diego had gone. Thompson said everything went fine, that Jess Lander was going to be in the office permanently as a dispatcher, and that some of his personal demands had been met. Ennis said it was the consensus of the employees to seek union representation, to which Thompson replied that, if he heard any talk of anyone going union, he was going to fire them. Ennis asked, "Do you really mean that he would fire you?" Thompson replied that not only would Armour fire him, he would pull the yard in a minute and close it. On cross-examination, Ennis testified that when he told Thompson that the consensus of the employees was to go union, Thompson said he had heard that and that if he caught anybody promoting the Union in the Sacramento facility he would fire them on the spot and that if they went union Armour would close the yard.

Lander testified that he was present when Thompson hired Earl Eltchinoff. Eltchinoff had worked for Respondent out of the Martinez facility as a casual employee. Eltchinoff told Thompson that he knew the Sacramento facility was a nonunion operation and he asked what the benefits and working conditions were, stating that he was in the process of looking around Sacramento. Thompson explained that the Sacramento facility had an entirely different operation from the Martinez facility, that they had a schedule by which they tried to work—if you were scheduled to work, you had to be available to work and if work was available you worked, and if there was no work available you did not work that day, or if your truck was in the shop you did not work that day. Eltchinoff asked if Lander thought his chances of being able to work steady out of the Sacramento facility were good. Lander said yes, he thought Eltchinoff stood a good chance of working fairly steady because they had just added a fifth truck and needed someone to fill a vacancy on that truck, that they were fairly busy at the time. Lander also said that the Sacramento facility was pulling approximately 90 percent of its product out of the bay area and he thought Eltchinoff would make a good move by coming to work at the Sacramento facility.

ty. Eltchinoff asked if Lander thought there was a chance of the facility going union. Lander said he did not think so. Thompson said it would never go union, that if they attempted to go union, the facility would be shut down. On cross-examination, Lander testified that Earl Eltchinoff came into the Sacramento facility and said that Walt Clement, the dispatcher from the Martinez facility, had sent him to see Thompson. Eltchinoff asked if there was a position open. Thompson said not at that time. Eltchinoff asked if he could fill out an application and be considered for future employment if there was an opening. Thompson said yes, he could and gave him an application blank which Eltchinoff filled out. Eltchinoff then said he liked working for Respondent, that he had been employed as a casual employee in the Martinez facility, and that he would like to work in the Sacramento facility. He said he was not getting much work at Martinez as a casual, that he intended to move to the Sacramento area, and was trying to locate a job in Sacramento. Thompson then told him that if he had an opening coming up Eltchinoff would be considered for the opening, that he came highly recommended from Walt Clement as a good driver. In this version of the conversation, Lander makes no mention that Thompson said there would never be a union at the Sacramento facility, that if the employees there attempted to go union the facility would be shut down.

IV. THE FEBRUARY 1981 UNION ACTIVITY

The employees at the Sacramento facility on February 21, 1981, were Carl Fox, Steven Shepherd, Donald Ennis, Jesse Lander, Garry Landis, Phil Lyles, William Wright, Don Kenneth Lynch, Donald Williams, Vernon Hilbun, Burt Baltz, Ray Faulkner, Merve Metzker, Dale Vagle, and Earl Eltchinoff. Almost all of these employees were present at a meeting held on that day, a Saturday, at Sambo's Restaurant with Tony Santos, an organizer for the Union, and Vince Alis, a representative of Teamsters Local 315. The employees began arriving at around 5:30 a.m. but the meeting did not commence until about 6:15 a.m. During the course of the meeting, the employees signed cards authorizing the Union as their collective-bargaining representative.

On the morning of February 21, at some time prior to 8:30 a.m., Santos approached Thompson and Lander at Eppie's Restaurant which is located across the street from the Sacramento facility. Both Lander and Santos testified as to the ensuing conversation. Although their testimony is contradictory as to the hour of this conversation, they did testify in substantial, though not total, agreement as to what was said. Santos testified that he introduced himself to Thompson as an organizer from the Union and told him that he represented the employees at the Sacramento facility. He further told Thompson that anything pertaining to the working conditions was Thompson's problem but that anything pertaining to the employees signing authorization cards and the Union filing a petition would be his problem, that the Union would file a petition and have an election. Santos also said that he wanted Thompson to know that, if any of the employees were laid off or discharged, he would file

charges. Santos then left. According to Santos, this conversation occurred at or about 8 or 8:30 a.m.

Lander testified that the conversation occurred about 6:30 a.m. According to him, Santos knew him. Santos came over, introduced himself, and asked who Thompson was. Thompson introduced himself as the terminal manager. Santos said that the men had all signed union pledge cards and that the Union would be representing the men in the negotiation of a work agreement with Respondent. He also said he did not want Thompson to hassle the employees, threaten to fire them or anything, and that the employees were over signing their pledge cards. Lander further testified that, after Santos left, Thompson said, "Well, the boys blew it there. I know Mr. Armour is going to close the yard now."

Santos credibly testified that he had the conversation with Thompson and Lander after the union meeting. From a consideration of the testimony of all the witnesses as to the time the meeting began and ended, it appears unlikely that the conversation occurred as early as 6:30 a.m. as Lander testified. To the extent that their testimony is in variance, I credit Santos. In this regard I note that Lander testified that Santos said that the drivers had all signed pledge cards and that he later said that the drivers were over signing pledge cards. Lander further testified that, after he and Thompson finished breakfast at Eppie's, they went over to the office at the Sacramento facility. Thompson said he had to notify Armour what had occurred. According to Lander, Thompson did make a telephone call in Lander's presence. Lander heard what Thompson said during the telephone conversation but could not hear what the other person said. Lander testified that Thompson said, "Good morning, Mr. Armour. I have some bad news." There was a pause, and then Thompson said that the men had agreed to go union, that they had a meeting with the Union that morning and signed pledge cards to be represented by the Union. This conversation was shortly after 7 a.m. and Thompson left the facility at approximately 7:30 a.m. and did not return until 11 or 11:30 a.m. Then on rebuttal, Lander testified that he did not see Thompson in the office that morning, that Thompson left at approximately 7 o'clock to make a run to Oroville.

Thompson did not testify, although he was in the hearing room during the presentation of the General Counsel's case on the first day of the hearing herein. He was not present on the second day when Respondent's case was being presented. Rapoza testified that, after the hearing had recessed on the first day of the hearing, Thompson, for the first time, notified him and counsel for Respondent that he was not available on the second day of the hearing because he had a job interview scheduled in the San Francisco Bay area for that day. Rapoza further testified that Thompson is presently unemployed and has not been in Respondent's employ since March or April 1981. According to Rapoza, when he and counsel were told of Thompson's scheduled job interview, they agreed that Respondent did not wish to obstruct his opportunity for employment. However, counsel for Respondent stated that Thompson was not under subpoena and no motion was made to continue the hearing in order to

secure Thompson's testimony nor was there any motion to resume the hearing in the San Francisco Bay area which presumably could have facilitated Thompson's presence at the hearing without unduly obstructing his opportunity for employment.

V. THE CLOSING OF THE SACRAMENTO FACILITY AND
THE TRANSFER OF THE SACRAMENTO EMPLOYEES TO
MARTINEZ

Lander testified that on the morning of February 21, after Thompson left the facility, he received a telephone call from Armour and Rapoza. It appeared to him that Armour and Rapoza were both on the line at the same time. Rapoza asked, "What happened up there, why the guys wanted to go union." Lander explained that the drivers were unhappy with the working conditions of having to go to Martinez and load with the union drivers out of the Martinez facility. They were unhappy with the way Thompson was running the facility. Rapoza said that they had sent all the trucks to Martinez. Lander asked where that left the Sacramento drivers. Rapoza said, "Well, if you guys want to work union, you can go to Martinez and work down there." This conversation was about 9 a.m. Later that morning, according to Lander, Rapoza telephoned him again and instructed him to dispatch all the drivers to the Martinez facility. When Lander explained that all the drivers were already out on runs, Rapoza further instructed him to contact the drivers at their locations and instruct them to take the trucks to the Martinez facility and park them after they completed their deliveries.

Thereafter Lander did contact the drivers and notified them to take the trucks to the Martinez facility. He also contacted the Martinez dispatcher to give him information as to the deliveries they had for the remainder of that day and for the next day. Later that day, he took all the records and paperwork from the Sacramento facility to the Martinez office and worked at the Martinez office for the remainder of that day. As the Sacramento drivers came in to the Martinez facility, Lander had the responsibility of providing them transportation back to the Sacramento facility to pick up their automobiles. For the next 2 weeks Lander worked out of the Martinez office in an effort to make the transition as smooth as possible. He then returned to work full time as a driver working out of the Martinez facility. Respondent has not operated out of the Sacramento facility since the morning of February 21.

It is undisputed that none of the Sacramento facility employees had any notice, prior to midmorning February 21, that the Sacramento facility would be, or might be, closed and that they would be transferred to the Martinez facility.

Armour denies that he spoke to Lander by telephone on the morning of February 21. Rapoza denied that he had any telephone conversation with Lander that day when Armour was also on the telephone. According to him, prior to February 21 he had no knowledge of any renewal of interest as to the union representation among the Sacramento drivers. Rapoza testified that around 7 o'clock that morning Armour instructed him to close down the Sacramento facility and transfer the trucks and

drivers to the Martinez facility. At or about 8 a.m. Rapoza telephoned the Sacramento facility and spoke to Lander. He told Lander that Respondent was going to close the Sacramento facility and asked if Thompson was there. Lander said Thompson was not there. Rapoza said they were going to close the Sacramento facility and move the trucks to Martinez because of the extra expense of having additional dispatchers and outside repair work on the trucks. Lander said the Sacramento drivers had a meeting that morning and signed pledge cards to join the Union. Rapoza said he did not see any problems because they were moving into a union area and the drivers could go union if they wanted to. Thereafter, according to Rapoza, although he and Lander talked several times that day regarding moving the trucks to Martinez, there was no further discussion between them relating to a union.

Rapoza further testified that on that same day he talked to Joe Williams, one of the Teamsters Local 315 business agents responsible for servicing the Martinez facility. He told Williams that Respondent was closing the Sacramento facility and moving the trucks and drivers into Martinez. He further told Williams that the drivers had had a meeting that morning and signed pledge cards and that they wanted to join the Union, and asked if Williams saw any problems with the drivers coming up to Martinez and joining Local 315. Williams said he did not see any problem. Rapoza also testified that on the following Monday or Tuesday he met with Williams and Ed Olds. Rapoza asked Williams about the seniority for the Sacramento drivers at the Martinez facility. Williams said that they would dovetail with the Martinez drivers, that they would go on the seniority board where their seniority in Sacramento would put them and if their seniority was higher than one of the Martinez driver's seniority then the Sacramento driver would be placed on the drivers' board above the Martinez driver with lower seniority. Rapoza further testified that in fact the Sacramento drivers were placed below all the Martinez drivers on the seniority board but that he did not know about this until the first day of the hearing herein when he talked to Union Representative Chuck Brooks. Neither Williams nor Olds testified.

Rapoza also testified that about a week or two after the closing of the Sacramento facility he met with Brooks and Al Bonnilla, secretary-treasurer of the Union. This was a meeting that had been previously scheduled with Armour, but Armour had to go out of town and Rapoza met with the union representatives. One of the union representatives asked why the Sacramento facility was closed. Rapoza replied that they had no product in the Sacramento area and that they had the expense of a dispatch office, two dispatchers, a telephone, and truck repairs in Sacramento when they had all those facilities in Martinez. One of them asked if Rapoza had authority to negotiate a contract. Rapoza said no. One of them asked if Rapoza thought they would ever open the Sacramento facility again and Rapoza said if the product became available they probably would. This latter question was asked two or three other times during the conversation and Rapoza said that the Sacramento facility

could not be opened at the present time because there was no product in Sacramento.

Rapoza further testified that a few weeks later he again met with Bonnilla, Brooks, and another person who he thinks was Don Ennis. Brooks asked if Respondent was ready to bring the trucks back to Sacramento. Rapoza said no, but that Respondent would be willing to sign the same contract with the Union that they had with Local 315 and if and when the trucks returned to Sacramento that everything would be taken care of. Brooks said that Respondent should return the trucks to Sacramento and negotiate a contract, and after the contract was negotiated he would talk about moving the trucks out of Sacramento. Rapoza said Respondent did not have any product in Sacramento, they did not have an office there anymore since the trailer had been returned. The union representatives asked Rapoza to leave the room so they could caucus, which he did. When Rapoza returned to the room, he signed a recognition agreement and agreed to sign an agreement to enter into a collective-bargaining agreement with the Union and to recall the Sacramento drivers if Respondent reopened the Sacramento facility.

The recognition agreement reads:

ARMOUR OIL COMPANY hereby recognizes TEAMSTERS UNION LOCAL NO. 150 as the sole collective bargaining agency for an appropriate unit consisting of all Truck Drivers working for ARMOUR OIL CO., primarily a Fuel Hauler, except Supervisors within the meaning of the National Labor Relations Board Act, as amended.

In accordance with their understanding at the March 16 meeting, the Union subsequently mailed the following agreement to Respondent which Rapoza signed on April 10:

SETTLEMENT OF AGREEMENT

Armour Oil Company hereby agrees to enter into, and to execute, a collective bargaining agreement with Chauffeurs, Teamsters and Helpers Local Union No. 150, I.B.T., which agreement shall contain all the terms and conditions contained within the current collective bargaining agreement between Armour Oil Company and Teamsters Local Union No. 315. Said agreement shall be effective from February 1, 1981, through July 1, 1982.

In addition to the above, Armour Oil Company agrees that in the event of closure of the Sacramento Terminal, all affected employees on the Sacramento Terminal Seniority list as of February 1, 1981, would have the right to be recalled to the Sacramento Terminal (or terminal located within the jurisdiction of Local 150), in the event said Sacramento Terminal (or terminal located within the territorial jurisdiction of Local No. 150) should be reopened, in accordance with their Sacramento Terminal Seniority. Terminal Seniority will prevail.

According to Rapoza, nothing was mentioned at this March 16 meeting about the seniority of the Sacramento

drivers at the Martinez facility. Furthermore, according to Rapoza, he has no knowledge of any grievance being filed by any employee with respect to the appropriate or inappropriate seniority accorded him at the Martinez facility.

Brooks testified that he, Bonnilla, and Ennis met with Rapoza on March 10 or 13. He asked Rapoza if he had the authority to negotiate any type of agreement. Rapoza said he did not. Brooks asked why the Sacramento facility had been closed and Rapoza said that, because Respondent could not get product on the pipeline, that it was more economically feasible for Respondent to run out of Martinez. Brooks asked, "Do you mean to tell me you can't get product at the Sacramento terminal?" Rapoza said, "Yes, we can, just as soon as we get some things cleared up." Brooks said that, during the 1979 contract negotiations, Henry Armour informed him that Respondent intended for Sacramento to be its hub, that he expected within a few years to have over 30 trucks in Sacramento, and that he had the ability to transfer as much fuel as he wanted through any pipeline wherever he wanted. Brooks then asked, "You mean to tell me after Hank tells me that, that you can't get the fuel over here on this pipeline." Rapoza said, "That's correct." Brooks asked why the sudden change to move the trucks out of the Union's area. Rapoza said, "We couldn't get the fuel into the pipeline and also the mechanics to work on the trucks." Brooks asked when the decision was made. Rapoza said Saturday morning, February 21.

Brooks further testified that he, Bonnilla, and Ennis met with Rapoza on March 16. Armour was supposed to be there but was not. Brooks asked why Armour was not in attendance. Rapoza said Armour had some other business to take care of and he could not make the meeting. Brooks asked, "Well then, do you have the authority to negotiate an agreement." Rapoza said he did. Brooks handed Rapoza a recognition agreement and asked if he would sign it. Rapoza said he would, and did sign it.

Brooks also testified that there was supposed to be another meeting in April but for some reason neither Rapoza nor Armour could make the meeting. There was some discussion on the telephone and it was agreed that Respondent would enter into the same agreement as Teamsters Local 315 had covering the employees at the Martinez facility. Brooks said he would draft the agreement and send it to Respondent for a signature. Brooks said they needed to get back together and develop language that would protect the Sacramento employees. It is not clear from the record whether this telephone conversation was with Rapoza or Armour, however, whichever one of them it was said he had no problem with that.

Lynch testified that upon his transfer to Martinez he was paid about 90 cents an hour more than he had received when he worked out of the Sacramento facility. He also testified that around the first week in March he had a conversation with Rapoza in the drivers' room. Other drivers were present and discussing the possibility of the Sacramento facility reopening. Rapoza said that Armour thought if it was feasible he would reopen the Sacramento facility, that he did not spend all the money

up there in Sacramento just to have a truck stop, he wanted a yard, he liked the Sacramento drivers, and he was very much interested in improving the area and getting more business. Rapoza said Armour had every intention of having a Sacramento facility and if at all possible he would return there, start another yard, and just more or less pick up where they had left off. Lynch said it was a shame to go through all the improvements and then turn around and close the facility. Rapoza said well in the very near future there were other plans in the making as far as an office and better facilities for taking care of the trucks and that was all to start "pretty soon." No other driver testified in corroboration of this conversation.

Ennis testified that, after the Sacramento facility was closed and the drivers were transferred to Martinez, a union meeting was held to discuss their legal position. During the meeting Armour was contacted by the Union and he asked to speak to a driver, so Ennis spoke to him. Armour identified himself and asked why the Sacramento drivers were unhappy, that he had jobs for them in Martinez. Ennis said there were no jobs in Martinez because the Sacramento drivers were all put on the bottom of the seniority list and there were no jobs for them. Armour said no, that he had it handled, that there would be openings for them. Ennis said he had talked to Lander and there were no openings for them because of the seniority, that they all had to go to the bottom of the list and there would be no work. Armour assured Ennis that he would take care of it. Ennis asked if Armour would be willing to meet with the employees. Armour said that he would be willing to meet and discuss anything with them. Ennis asked if he would be willing to talk to them in person. Armour said yes, he would. Ennis also testified that at some point in the conversation Armour said he did not understand it, that if the Sacramento drivers wanted to be union then they could go to Martinez and be union. It is undisputed that some of the Sacramento drivers were laid off for a period of time after they transferred to Martinez. The layoffs were by seniority. However, the record does not establish whether any of the Martinez drivers who were ahead of the Sacramento drivers on the drivers' board actually had less seniority.

VI. THE DECISION TO CLOSE THE SACRAMENTO FACILITY AND THE ALLEGED ECONOMIC REASONS THEREFOR

Armour has been in the oil business for more than 50 years and has owned his own business for more than 40 years. It is apparent from his testimony that he makes all major decisions and that he is the one who makes all purchasing and marketing decisions. According to Armour's credible testimony, the wholesale oil business has never been completely stable; however, since the 1973 oil crunch it has been even less stable. The 1973 crunch eliminated between 50 and 75 percent of Respondent's business due to the shortage of products. The 1979 crunch caused a lesser decrease in business. The difference in the two periods of shortage was that in 1973 there was a great overall shortage whereas in 1979 there was not as much of a total shortage but the availability of products varied widely in different areas. Generally

speaking the effect on Respondent's supply was that in the area such as Los Angeles and the bay area, where Respondent received its supplies directly from a refinery, there was no particular shortage. However, in the areas such as San Diego, Las Vegas, Phoenix, and Sacramento, which are serviced by pipelines, there was a shortage. There have been great fluctuations in product supply and prices which he anticipates will continue in the foreseeable future. When Respondent commenced its operations from the Sacramento facility, it had a fairly good source of supply from two or three companies at the pipeline. It was anticipated, however, that Aminoil would be the principal supplier for the Sacramento operations. This was based on a general rather than a specific commitment from Aminoil. That is, Respondent was told simply that the product would be available in sufficient supply in Sacramento. On a monthly basis, Aminoil would indicate the availability of a certain amount of product for the month. Then actual availability would depend upon adjustments made on a day-to-day basis. Armour called his suppliers daily to find out how much fuel he could have. He then notified his dispatchers of the source of supply for that particular day. About 5 or 6 months before Respondent closed its Sacramento facility, according to Armour, the supply decreased to the point where Respondent was only picking up 10 percent or less of its product in Sacramento. The five trucks based at the Sacramento facility were picking up supplies from Pacific Refining in Hercules and UCO in the Martinez area. Several days before operations were discontinued at the Sacramento facility, Douglas Smith from Aminoil informed Armour that they had no supply for Respondent and could not hold out any hope for future availability.

Armour testified that in the wholesale oil business, the tanker trucks run empty a substantial portion of the time. This is because they haul only petroleum products which can be obtained only at a refinery or a pipeline terminal. Thus, once a truck is unloaded and product delivered to the customers, there is no possibility of obtaining another load on the return run back to the refinery or the pipeline terminal. Therefore, a truck is empty roughly 50 percent of the time which increases the transportation cost. Respondent's transportation cost for its entire operation averages \$1 a mile. In mountainous areas, the cost is somewhat more than that, and in city areas, it is somewhat less. Respondent's trucks carry 8,800 gallons. The transportation cost to deliver to Sacramento customers from Martinez is approximately \$60. According to Armour, when the Sacramento facility was opened, it was beneficial for Respondent to pick up petroleum product from a pipeline terminal because the difference in price in Sacramento as compared to the bay area was such that it would not pay to haul gasoline from the bay area to Sacramento. Rather, it was cheaper to pick it up at a Sacramento pipeline terminal even considering the additional pipeline charge of one-half cent a gallon. Further, by February 1981 there had been a decrease in the cost of the product purchased by Respondent in the bay area without a corresponding decrease in the cost of the product purchased by Respondent from the Sacramento pipeline terminal. In February 1981, when the Sacramen-

to facility was closed, Respondent could purchase petroleum products in the bay area for 1-3/4 to 2 cents a gallon cheaper than it could through the Sacramento pipeline terminal. As of the time of the hearing herein, this cost differential had increased to a minimum of 3 cents a gallon or approximately \$270 a truckload. Thus, even though an adequate supply of petroleum product had become available in the Sacramento area by the time of the hearing herein, according to Armour, it was not at a price that Respondent could afford to pay. This is particularly true since in 1980 Respondent's break-even margin was 1-1/2 cents a gallon.¹⁴

Another economic consideration, according to Armour, was the overhead cost of operating the Sacramento facility. This included the cost of renting the trailer and the cost of the telephone. Also, the operation required 7-day dispatching service. Thus, Thompson worked as a dispatcher for 5 days and Lander for 2 days a week at a wage rate of \$9.33 an hour plus overtime for a 12-hour day.¹⁵ Also, the repair and maintenance of the trucks at the Sacramento facility was done by outside contractors at commercial rates whereas maintenance and repair, other than major overhauls, for trucks at the Martinez facility was done by Respondent's employees at a cost of approximately \$20 an hour less than commercial rates. When the Sacramento operation was transferred to Martinez, all dispatching was done out of the Martinez office without an increase in the size of the Martinez dispatch staff. The transfer therefore eliminated the cost of trailer rent, telephone service, and dispatch service which had been maintained at the Sacramento facility. Further, there was a substantial decrease in the cost for the repair and maintenance of trucks. Thus, according to Armour, not only had the initial advantage as to transportation and product cost vanished but there was substantial additional expense due to the duplication of dispatching staff and facilities and the higher cost for repair and maintenance of equipment. Furthermore, competition prevented Respondent from covering these expenses by increasing its selling price.

As to the timing of the decision to close the Sacramento facility, Armour testified that on a continuing basis he had been considering the relative economics of maintaining an operation in Sacramento as well as in certain other locations. The supply of petroleum products in Sacramento had been diminishing gradually for some time. Then, in or about October 1980, the supply dropped appreciably. At that time Douglas Smith from Aminoil told him that the supply situation was getting worse and that Respondent should not expect to obtain very much petroleum from any of Aminoil's terminals. At this point, Armour began considering the possibility of closing the Sacramento operation. The Sacramento facility had been established in an effort to develop more business to the north and east of Sacramento. Also, it was anticipated that economies could be realized by

making deliveries from a yard in Sacramento since about 50 percent of Respondent's customers who would be serviced from a Sacramento operation were located in the city of Sacramento, and the areas where Respondent anticipated developing business were closer to Sacramento than to any of Respondent's other facilities. However, with the diminishing of the petroleum supply at the Sacramento pipeline terminal, it was becoming apparent that it was rather costly to have trucks stationed in Sacramento that had to come into the bay area to pick up product. Over the next 4 or 5 months Armour and Rapoza had numerous conversations regarding the possibility of closing the Sacramento facility. According to Armour, at no time did he discuss this possibility with Thompson, his reason being that he did not consider that Thompson's input would be helpful.¹⁶

According to Armour, Respondent had an overall loss in 1980. The Bakersfield, Martinez, and San Diego facilities were the only terminals out of Respondent's 10 facilities operating above the break-even margin. According to Armour, it is his practice to review data concerning the profitability of each of Respondent's facilities on a monthly basis. The Sacramento facility started to operate at a loss during the last 3 or 4 months of 1980. Armour further testified that Respondent tries to keep its loss at a minimum so it moves trucks constantly from one area to another. It will concentrate and try to develop more business in locations where margins are greater and will deliberately not try to develop business in areas where the margin is shorter. Respondent has opened and closed facilities at Bakersfield three or four times and has been in and out of Portland and Seattle even more times. According to Armour, the situation is very unstable in Portland and Seattle and at the time of the hearing herein they were in the process of deciding whether to close facilities in Portland, Seattle, and Spokane. Respondent's business in those locations at the time of the hearing was less than half what it was 90 days earlier and he anticipates that it will drop another 50 percent within the next 30 days. Since the Sacramento facility was closed, Respondent has decreased the number of trucks operating out of its Seattle facility from four to one; out of its Portland facility from six to two; and out of its Spokane facility from three to one. The Spokane operation was cut 3 or 4 months prior to the hearing herein and the Seattle and Portland operations were cut about a month prior to the hearing. At or about the end of 1980 Respondent cut the number of trucks operating out of its Las Vegas facility from five to one, and out of its Phoenix facility from three to one.

Armour testified that he made the final decision to close the Sacramento facility while he was at home on Friday night, February 20. On Saturday, February 21, at or about 7 or 7:30 a.m., Armour discussed this decision with Rapoza. He told Rapoza that, since the expense of operating the Sacramento facility was so high, Respondent would do better to cut off all those expenses and do

¹⁴ The difference between the price at which Respondent purchased the product and the price at which it sold the product.

¹⁵ Armour testified that this amounted to a monthly cost of approximately \$6,500. It is unclear from Armour's testimony whether this figure represented the cost of the total wage package. There is no evidence in the record to establish the cost of fringe benefits.

¹⁶ Thompson was a driver who had been promoted to manager-dispatcher. There is no evidence that he had any knowledge of the supply and marketing aspect of the wholesale oil industry nor that he had any experience in managing terminals.

the dispatching out of Martinez, that they would eliminate not only the payroll but also rental on the trailer and telephone expenses because they already had all those facilities in Martinez. Armour further said that, now that there was no product available in Sacramento, it would be foolish to keep bearing the expense of operating the Sacramento facility. Rapoza said he agreed that it was a waste of money. Armour told Rapoza to handle the situation, to close the Sacramento facility, and to get the trucks operating out of Martinez. He further told Rapoza to make sure that every Sacramento driver was offered a full job in Martinez under the Teamsters Local 315 contract. After this conversation, Armour left the office. Rapoza testified in substantial agreement with Armour.

According to Armour, prior to this conversation he had heard nothing about current union activities at the Sacramento facility. He had not received a telephone call from Thompson with respect to such activity at the Sacramento facility nor from Lander or anyone else. He further denied having any telephone conversation at all with Thompson or anyone in the Sacramento area prior to his conversation with Rapoza. He also denied that he ever said anything to Thompson with respect to what he would do if the Sacramento drivers were to decide to be unionized. Similarly, Rapoza denies that he discussed with Thompson the possibility of closing the yard. Rapoza also denies that he and Armour mentioned the Union during their discussions regarding closing the Sacramento yard.

As to why the decision was implemented so suddenly, Armour testified that things had gotten to a point where it seemed to be ridiculous to be carrying that additional expense. He had been putting it off but once he made the decision he thought it should be implemented immediately. He further testified that this immediate implementation on the decision was repetitive of a pattern that he has previously followed with respect to cutting back or closing operations. According to him, he has never given advance notice to anyone with respect to such decisions but rather has implemented the decision on the same day that it was made.

According to Armour, he did not learn of the February 21 union activity until about a week thereafter. He learned of it either from Rapoza or possibly Jess Lander. Rapoza testified that after instructing Lander what to do about closing the Sacramento facility, he first made a report to Armour by telephone on the following Monday. Armour telephoned him and wanted to know if the yard had been closed and the equipment and drivers moved to Martinez. Rapoza said yes, and there was no further discussion on the subject.

VII. CONCLUSIONS

A. Thompson's Statements

Several drivers testified that Thompson told them that the Sacramento facility was nonunion and was going to stay that way, that the Sacramento facility would be closed if the employees chose to be represented by a union, and that he would discharge any driver advocating union representation. Thompson did not testify.

However, notwithstanding that their testimony is undenied, I find that the testimony of certain of these drivers is not credible or is unreliable in some respects.¹⁷ Thus, Fox is not sure whether he or Thompson said the trucks would be moved to Martinez if the Union was voted in. Baltz testified on direct examination, as to a November conversation, that Thompson said there was no way the facility would go union, that Armour would close it; yet, on cross-examination his testimony as to the conversation contains no such reference. Then on redirect examination, he testified that Thompson said, "It will never be a union shop here."

Wright testified that when he was hired in May 1980 Thompson told him the Sacramento facility was nonunion, would remain nonunion, and he would not tolerate any union discussion in the facility. Yet when he testified on cross-examination as to this conversation, he did not relate any such remark. Further, there is this same contradiction, as to a critical remark, between his testimony on direct and that on cross-examination. I conclude that the testimony of Fox, Baltz, and Wright is unreliable as to the critical statements allegedly made by Thompson during these conversations and I do not credit them in this regard. Further, for reasons discussed more fully below, I found Lander to be an unreliable witness whom I do not credit. I do not find the testimony of Fox,¹⁸ Lynch,¹⁹ Hilbun, Shepherd, and Ennis to be internally inconsistent or contradictory. Further, their testimony tends to be mutually corroborative in that they testified as to similar statements made by Thompson. Therefore, I credit their undenied testimony as to conversations with Thompson. Accordingly, I find that Respondent violated Section 8(a)(1) of the Act by Thompson's statements to Lynch, Hilbun, and Ennis that the Sacramento facility would be closed if the employees chose union representation; by Thompson's statements to Fox and Shepherd that the Sacramento facility was nonunion and was going to stay that way; and by Thompson's statement to Fox, Shepherd, and Ennis that he would discharge any driver who advocated the Union.²⁰

B. The Closing of the Sacramento Facility

The complaint alleges that the closing of the Sacramento facility was unlawful. In support thereof, the General Counsel argues that Respondent was determined to keep the Sacramento facility nonunion and that this determination was motivated by its desire to operate under the lower cost of the Bakersfield contract rather than the Martinez contract; to have available nonunion drivers at

¹⁷ I have fully considered the General Counsel's argument as to the inference which should be drawn from Respondent's failure to call Thompson to testify. However, Thompson is no longer in Respondent's employ and he was available to the General Counsel as well as to Respondent.

¹⁸ I did not credit Fox above as to the one conversation only because he was not sure whether he or Thompson had made the coercive statement.

¹⁹ Although Wright and Ennis testified, I note that Lynch was not always certain as to the identity of the other driver(s) present and neither Wright nor Ennis was questioned as to these conversations.

²⁰ The statements made by Thompson to Lynch and Ennis in August 1980 regarding the Sacramento facility being and/or remaining nonunion are outside the 10(b) period.

the Sacramento facility to use in order to make deliveries in the Martinez territory in the event of a labor dispute there; and to assure its freedom of action without union interference.

However, this argument, in essence, could be said to describe the desires of almost all employers. Yet it does not necessarily follow that an employer is willing to discriminate against employees because they choose to be represented by a union. Further, Respondent's operations have been union for a number of years. Respondent is used to operating with the "interference" of a union; and when it opened its Sacramento facility, Respondent contacted the Union and thereafter engaged in collective-bargaining negotiations with the Union. Even though Respondent proposed the terms of the Bakersfield's contract and opposed the terms of the Martinez contract, it did not take a "take-it-or-leave-it" position since Brooks testified that by the time of the last negotiation session they had come very close to the terms of the Martinez contract. This does not seem to be the actions of an employer determined to avoid dealing with a union.

On the other hand, Thompson's statements and the timing of the closing of the Sacramento facility tend to support the General Counsel's position. Thus, the General Counsel argues, in view of Thompson's responsible position with Respondent and the frequency of his contacts with Armour, his statements that the continued existence of the Sacramento facility was dependent upon its continued nonunion status warrant an inference that they were based on Thompson's discussions with Armour. Further, the General Counsel contends, Respondent's failure to call Thompson as a witness justifies an inference that he would have testified adversely to Respondent with respect to the basis of his statements about unions.

Contrary to the urgings of the General Counsel, I draw no adverse inference from Respondent's failure to call Thompson as a witness. As indicated above, Thompson is no longer in Respondent's employ. He was available to both the General Counsel and to Respondent. Neither of them called him as a witness.

As to the General Counsel's argument regarding the basis for Thompson's statements, there is no evidence that Thompson's duties and responsibilities extended beyond dispatching and hiring for the Sacramento facility and arranging for the maintenance of the trucks located there. There is no evidence that he had any managerial responsibilities that involved Respondent's overall operations. Basically he was a dispatcher with authority to hire and fire. Further, considering that he told Ennis that Armour had met his demands by *inter alia* agreeing to Lander being permanently in the office, and the fact that Lander continued, as before, to relieve Thompson only for 2 days a week, it appears that Thompson had a tendency toward exaggeration.

In all the circumstances, including my observation of their demeanor on the witness stand, I credit Armour's and Rapoza's denials that they said anything to Thompson regarding union representation at the Sacramento facility. Also, despite the urgings of the General Counsel, I draw no inference from the fact that Armour spoke to Thompson by telephone almost daily. Insofar as the

record reveals, these telephone calls were made to Thompson, in his capacity as dispatcher, simply to inform him of the daily sources of supply.

The General Counsel further argues, as indicia of unlawful motivation, Respondent's failure to follow its established practice of seeking to reduce the number of trucks assigned to a location rather than closing the facility, particularly since the expenditure of considerable money on developing the yard and the plans for expansion provided strong justification for Respondent to keep the yard open. The record does not support this argument. Thus, Armour testified, without contradiction, that he has opened and closed facilities in Bakersfield and Seattle several times. Also, the paving of the truckstop and the installation of lighting and a wash rack are not such major capital expenditures as to justify a conclusion that a prudent businessman would not abruptly abandon such improvements. This is particularly true since these improvements are of the type which would enhance a service station and truckstop and Armour and Rapoza testified that this was the only Gas-N-Save station and truckstop that was unpaved and Respondent considered that paving the area would make it more attractive to truckers.

As to timing, the General Counsel correctly argues that, where an employer takes an action affecting the employment status of its employees shortly after learning that the employees have sought union representation, the timing warrants an inference that the employer's action was motivated by the union activities of its employees; and the abrupt nature of the action and a lack of warning are indicia of unlawful motivation. *Howard Johnson Company*, 209 NLRB 1122 (1974); *Industry General Corporation*, 225 NLRB 1230 (1976). However, I find that any such inference has been rebutted here. Thus, Armour testified, without contradiction, that Respondent's practice always has been to close facilities abruptly without prior warning.

The only evidence that Respondent had knowledge of its employees' union activity prior to the closing of the yard, aside from the coincidence of both occurring on the same day, is the testimony of Lander. However, I find Lander's testimony to be inconsistent and contradictory and it is contradicted by the testimony of other witnesses for the General Counsel. Thus, he testified that he was at Sambo's briefly at or about 5:45 a.m. before the meeting started, that all the Sacramento drivers were there, and that he saw Santos there. Yet some of the driver-witnesses variously testified that they did not arrive until after the meeting started, that the meeting did not start until after 6 a.m., and that Santos testified that he arrived late because he did not know that the meeting had been changed to Sambo's until he saw Lander at Eppie's and Lander told him the new location of the meeting.

Also Lander testified that on February 21 he spoke to Armour and Rapoza by telephone and that it appeared to him that both of them were on the telephone at the same time. Yet his account of the conversation contains absolutely no reference to any remark by Armour. Lander first testified that Santos told him and Thompson at

Eppie's prior to 7 a.m. that the drivers had all signed pledge cards. Then he later testified that Santos said the drivers were over signing pledge cards. Yet other driver-witnesses testified that the cards were signed at the meeting, that the meeting did not end until after 7 a.m., and that Santos remained at Sambo's for some period of time after the close of the meeting. Finally, Lander testified that shortly after 7 a.m., from the office of the Sacramento facility, Thompson telephoned Armour and told him that the drivers had signed union pledge cards that morning and then Thompson left the office at or about 7:30 a.m. Yet, on rebuttal, Lander testified that he did not see Thompson in the office that morning and that Thompson left at 7 a.m. to make a run to Oroville.

In these circumstances, I find Lander to be a totally unreliable witness whom I do not credit. On the other hand, I found Armour and Rapoza to be reliable witnesses and credit their denial that they had any conversation with Thompson that morning and that they had any knowledge of the February 21 union activity until after Rapoza telephoned the Sacramento facility to instruct that the facility be closed. I further credit Armour that he made the decision to close the Sacramento facility on the night of February 20 for valid business reasons. In this regard, I note the almost total unavailability of product from Aminoil, Respondent's principal supplier in Sacramento; Respondent's pattern of transferring its trucks between facilities, sometimes reducing or increasing the size of its operations at a specific location and sometimes opening or closing a facility in response to the supply and demand at a particular location; the duplication of dispatching and office expenses and the increased cost of truck maintenance occasioned by the maintenance of a Sacramento facility; Respondent's long history of collective bargaining with Teamsters locals; its past history of bargaining with the Union; and the fact that all the Sacramento drivers were transferred to Martinez, a union operation.

In these circumstances, I find that Respondent did not close its Sacramento facility and transfer its employees at that facility to its Martinez facility because of their union activity. Accordingly, I find that Respondent did not thereby violate Section 8(a)(3) and (1) of the Act.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent has interfered with, restrained, and coerced employees in violation of Section 8(a)(1) of the Act by telling employees that they would not be allowed to obtain union representation; by threatening employees that they would be discharged if they sought union representation; and by threatening employees that Respondent would close its Sacramento facility if the employees selected a union as their collective-bargaining representative.

4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

5. The evidence does not establish that Respondent has engaged in any unfair labor practices except as set forth above.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that Respondent cease and desist therefrom and take certain affirmative action in order to effectuate the purpose of the Act.

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in this proceeding, and pursuant to Section 10(c) of the Act, I hereby recommend the following:

ORDER²¹

The Respondent, Armour Oil Company, Martinez and West Sacramento, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Telling employees that they will not be allowed to obtain union representation.

(b) Threatening employees that they will be discharged if they seek union representation.

(c) Threatening employees that it will close one of its facilities if the employees at that facility select a union as their collective-bargaining representative.

(d) In any related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed in the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Post at its place of business in Martinez, California, copies of the attached notice marked "Appendix."²² Copies of said notice, on forms provided by the Regional Director for Region 20, after being duly signed by its authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 20, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

²¹ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

²² In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."